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Chair

Mr. Dave MacKenzie

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• (1530)

[English]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): I'd like to call this meeting to order. It is meeting 42 of the Standing Committee on Justice and Human Rights. Pursuant to the order of reference of Wednesday, June 20, 2012, we have Bill C-36, An Act to amend the Criminal Code (elder abuse).

Today we have appearing before us the Honourable Rob Nicholson, Minister of Justice and the Attorney General of Canada. With the minister is Carole Morency, acting director general and senior general counsel with the Criminal Law Policy Section from the Department of Justice. Welcome to you both.

Minister, I understand your time is limited to one hour with us, and we're disappointed you couldn't stay longer, but we recognize that. If you have an opening address on this matter, please go ahead.

Hon. Rob Nicholson (Minister of Justice and Attorney General of Canada): Thank you, Mr. Chairman. It's an honour to have an opportunity to appear before the committee to present Bill C-36, the Protecting Canada's Seniors Act.

The government is committed to protecting elderly Canadians and to ensure that crimes committed against them are punished appropriately. Seniors are becoming an increasingly larger segment of Canadian society. In 2010 there were 4.8 million people aged 65 years and older, representing 14.1% of the Canadian population. The number of people in this age bracket is expected to exceed 10 million people by 2036, which will be almost 25% of the Canadian population.

This phenomenon is resulting in an increase in cases of elder abuse, whether physical or psychological abuse, financial exploitation, or negligence. This is why the government is committed to specifically describing as an aggravating factor for sentencing purposes the fact that an offence has had a significant impact on victims because of their age and any other aspect of their personal situation, including their health and financial situation. This is exactly the provision that is contained in Bill C-36.

The proposed amendment to the Criminal Code takes several things into account. First, it acknowledges that the impacts are not always primarily related to the victim's age; rather, it's a combination of characteristics of the victim, such as the victim's health or a physical disability. It is this combination of age and personal factors that determines the severity of the impact of this offence on an elderly person who is a victim of abuse.

Second, the proposed measure complements the existing provisions of the Criminal Code that apply in cases of elder abuse. For example, the Criminal Code specifically identifies as aggravating circumstances the fact that an offence was motivated by bias, prejudice, or hate. This is based on factors such as age, mental or physical disability—subparagraph 718.2—or evidence that the offender abused a position of trust or authority in relation to the victim, in addition to the Standing up for Victims of White Collar Crime Act, which you will remember came into force on November 1, 2011, which also provides as an aggravating circumstance of the offence of fraud the fact that the offence has had a significant impact on the victims “given their personal circumstances including their age, health and financial situation”. Bill C-36 reflects the approach of our courts in treating the impacts of an indictable offence against seniors as an aggravating factor. It also gives more weight to the objectives of denunciation and deterrence in these cases. Therefore, the addition of the proposed aggravating factor would ensure that various circumstances in which offences are committed against seniors are always treated as aggravating factors.

Mr. Chair, we've heard the opposition parties criticize Bill C-36 as not going far enough to fight elder abuse, but I can assure them that the government does not view this legislation as being the only solution to the problem of elder abuse. Rather, we see it as a complement to our government's efforts and to those of the provinces and territories.

For several years the federal government has invested resources in assisting the victims of crime. The federal victims strategy, which was implemented in 2007, has the objective to give victims, including elderly victims, a more effective voice in the criminal justice system. Moreover, Budget 2011 renewed the federal victims strategy and committed \$13 million per year in funding.

• (1535)

Budget 2012 builds on this funding by adding \$7 million over five years. It's also important to point out that most of this funding is dedicated to the victims fund. As you may know, the victims fund is a grants and contributions program that provides funding to provinces, territories, and non-governmental organizations. It enables many stakeholders to organize activities and raise awareness of services and laws that deal with elder abuse. The Elder Abuse Response Team is an example of this. In 2012, they brought together the Kerby Centre, the Calgary Family Services Society, and the Calgary Police Service to investigate cases of elder abuse and provide support to victims. This was possible because of funding provided by the victims fund.

In 2008 we launched the federal elder abuse initiative, a successful \$13 million, multi-departmental initiative. Its goal was to help seniors and others recognize the signs and symptoms of elder abuse and provide information and available supports.

Another example of the federal government's efforts to raise national awareness of the subject is the "Elder Abuse - It's Time to Face the Reality" campaign. This campaign was launched in 2009 and was part of the federal elder abuse initiative. You may remember the advertisements on this that aired in 2009, 2010, and earlier this year.

In addition, our government also addresses elder abuse through the new horizons for seniors program. We recently increased the budget's program by \$10 million, for a total of \$45 million per year.

As we heard during the second reading of this bill, as part of the continuing efforts after the federal elder abuse initiative, the information it gathered remains available to anyone seeking information on this subject.

It's important to note that certain areas in the fight against elder abuse fall exclusively, of course, within provincial jurisdiction, either through laws of general application, such as legislation targeting family violence, or through more specific laws. For example, health services is an area in which many provinces have enacted legislation to fight elder abuse in health care institutions.

These efforts reflect our government's acknowledgement that the preferred approach to fight elder abuse requires the participation of not only the federal government, but of course the provinces and territories.

For our part, this bill will ensure that the objectives of denunciation and deterrence are paramount sentencing considerations when crimes against the elderly are committed.

The proposed amendment is not intended to be a simple stand-alone response to elder abuse, as I have indicated. Instead, it serves as a complement to all the efforts being made by this government to protect elderly Canadians and to ensure there are sentences for those who take advantage of vulnerable members in our society.

Thank you for this opportunity, Mr. Chair.

• (1540)

The Chair: Thank you, Minister. We appreciate the opening comments.

Now we begin the rounds. Just as a reminder—we've been gone for a little while—the opening rounds are seven minutes per party, and from that point on they're five minutes for each member.

We begin with Madam Boivin.

[*Translation*]

Ms. Françoise Boivin (Gatineau, NDP): Thank you, Mr. Chair.

Mr. Minister, thank you for going over Bill C-36 with us. It is refreshing.

[*English*]

It's a good thing to finally have a bill on which I think we will all be working on the same page. Just that fact is good, believe me, and

a good change of pace. It doesn't mean that it's always going to be like this—don't put your hopes too high—but at least on this one....

It's a paragraph that is added to the Criminal Code.

[*Translation*]

This additional paragraph is a very important concept, which says what it needs to say. The title, Protecting Canada's Seniors Act, implies a host of things. And it is only one section.

I believe you said that it is not a panacea in itself. I don't think that anyone around this table claims that it will fix all the problems facing our seniors here in Canada.

I would also like to acknowledge the outstanding work accomplished by my colleague Ms. Blanchette-Lamothe. I thank her for joining our committee for the study of Bill C-36. She does an amazing job for seniors. So I would like to welcome and thank Lysane Blanchette-Lamothe.

I have a question for you, Mr. Minister. Section 718.2 deals with the principles of sentencing. As an aside, I would just like to say that it is a relief not to have to talk about minimum sentences, but instead to talk about the fact that courts have to look at each case to determine the fairest sentence. The section reads as follows:

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing, ...

Various items follow, among which subparagraph 718.2(a)(ii.1) that says:

(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years ...

As a result, when it comes to the offence and aggravating or mitigating circumstances, age is a factor. The idea now is to add subparagraph 718.2(a)(iii.1) that reads as follows:

(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation ...

Why is there a distinction made for young people? It is directly referring to the aggravating or mitigating impact of age per se, but when it comes to seniors, there needs to be more evidence than just the age.

Is it because we are unable to establish what a senior is and the age when one becomes a senior? I am not sure. That is the only question that came to my mind as I was reading the proposed subparagraph. We are in fact still going to be required to be able to demonstrate a significant impact. We cannot walk out of this room and say that the simple fact of committing a criminal offence against a senior is an aggravating or mitigating circumstance. There has to have been an impact. Could you tell me why this choice has been made in this particular context?

[English]

Hon. Rob Nicholson: Thank you very much, and thank you for your participation in the selection panel for the Supreme Court. I hope it was a fulfilling and worthwhile exercise for you. My understanding is that it was, and I wanted to publicly thank you for your participation in that.

You've pointed out a number of elements with respect to the aggravating circumstances sections of the Criminal Code. You pointed out, quite correctly, that there are special aggravating circumstances for individuals under the age of 18, for children, for people who abuse children or commit crimes against children, that it is a specific aggravating offence. Certainly use of the term "under 18" is consistent with youth criminal justice and basically our accepted definition of who is or who is not a child in this country. So it's consistent on that.

With respect to the provisions with respect to older Canadians, it's interesting that when you have a look at all federal legislation, you'll see that what we might consider the age of being a senior is all over the place. In the judicial community judges may retire at 75, so they become an older person at age 75—or is it 60, 65, 67?

What they tell me is that when people are abused, one of the factors is their age. It comes in combination with something else. There may be a physical or a mental attribute that goes with this that makes the person more vulnerable. You might have a situation where somebody is in wonderful health at 75 and is not suffering from any apparent disability, whereas you could have somebody 10 years younger than that whose either mental or physical abilities have considerably declined.

When we had a look at it, it seemed to me we were farther ahead by not putting down a specific age in which this would kick in, and that we would put it as we have put it there, that it's in combination with the person's age and some other element, and it should be an aggravating factor.

The important point for us, though, and it shows the increasing concern society has with respect to elderly people by mentioning it as an aggravating factor, is a recognition that what I think most of us are told when we go across this country and when we go back to our constituency, that this is a problem or it can be a problem. And particularly with the increasing age of Canada's population, I think it's a recognition of that to make the specific reference to it.

Generally, that's what they tell me. It's in combination with something else. I thought that was an appropriate way to phrase it for the Criminal Code.

• (1545)

Ms. Françoise Boivin: Thank you.

The Chair: Thank you, Minister. You are right on time.

Ms. Findlay.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): Thank you, Mr. Chair.

Thank you, Minister and Ms. Morency, for being here with us today.

I am glad to hear you say that the definition of senior is all over the map, Minister. I had a conversation with someone yesterday who was describing an elderly woman. I said, "From your perspective, in your mid-30s, what are we talking about?" When he said mid-70s, I felt much better.

Minister, in our Speech from the Throne of June 3 of last year, we committed to protecting the most vulnerable in society and to working to prevent crime by proposing, among other things, tougher sentences for those who abuse seniors. This is something I feel strongly about, having been very involved in elder care for both of my parents, who have now passed away. I know this echoes our government's platform to amend the Criminal Code, as we are suggesting here today.

You mentioned the new horizons for seniors program. I know that additional funds were announced in both budgets, in both 2010 and 2011, for annual funding of about \$45 million, to include projects to raise awareness of financial abuse.

What I am wondering about and wanted to ask you to address today is, first of all, how common you feel elder abuse is in this country. Do you know how often seniors are abused and by whom? Also, when we speak of abuse, some people assume that it means physical and others assume that it means financial. What do we mean by the term?

Hon. Rob Nicholson: The statistics we have from 2009 are that there are approximately 7,900 reports of abuse of seniors in this country. It's interesting, the breakdown you get on this. Approximately a third of the abuse was committed, or was alleged to have been committed, by family members. About another third was by a friend or a friend of the family. Another third was by strangers. From my discussions with victims groups, law enforcement agents, and people involved in this area, it's growing, and it will continue to grow. The statistics alone tell us that. With the increase in the seniors population in Canada, this is going to be more of a challenge.

Men and women are victimized in approximately equal numbers in a number of the categories. That being said, there is a greater awareness of it, which is one of the positive things about this. People are talking about it more. I have appreciated and certainly support government efforts to advertise this to make sure that funds are getting out so that there is a greater awareness of this particular challenge.

Again, 20 or 30 years ago, people would think that if you were a victim of crime...many times you'd think of it as being a stranger or somebody breaking into your house and that sort of thing. Well, very often these are people who may be in very close contact with you. That being said, I have heard of many instances of strangers targeting elderly people and taking advantage of people who they hear are having difficulty.

One of the initiatives I was here about before, as you know, was on white collar crime. We made specific reference that it is one of the aggravating factors there. If the individual is an older person, the effect of losing that money can be devastating, as you know, to somebody who may or may not lose his or her life savings.

Again, it's a growing problem, from everything I hear. Statistically, they tell us that with the increase in the seniors population, this is a continuing concern. This is why I think, at this time, it's appropriate to put this in and specifically recognize it in the Criminal Code as one of the aggravating terms.

• (1550)

Ms. Kerry-Lynne D. Findlay: Thank you.

Is there any more time?

The Chair: You have three minutes.

Ms. Kerry-Lynne D. Findlay: Minister, you said that the information is that it's about 50-50 for men and women. I think a lot of us tend to assume that perhaps older women are taken advantage of more often, maybe because, generally speaking, women tend to live longer than men, although I think that is changing as well. Would that be something seen across the country? Are there regional differences at all?

Hon. Rob Nicholson: When you get into the breakdown—and you may hear this from some of the other witnesses—men are more likely to be victimized in slightly more numbers overall. If you get into the categories of family-related elder abuse, women outnumber men in that particular area. Depending on which aspect of this you're looking at, you'll get a slightly different configuration.

That being said, there is a recognition in Canada that this is increasing, so we've already taken steps, as you know, with respect to white collar crime, as I just mentioned. To the extent that we, along with this and other initiatives, are working with provinces and non-governmental organizations to encourage people to apply for the victims fund, for instance, to help raise awareness of these issues, I think we're all farther ahead on that. Again, you'll hear others who I'm sure will have a very extensive breakdown as to where and who is being abused.

As I say, it's basically one-third, one-third, one-third. The stereotype you may have thought of 20 or 30 years ago, with the stranger who is abusing a senior citizen or beating up somebody doesn't quite fit the description of what's happening in Canada. Approximately two-thirds are either by family members or so-called friends of the family.

Ms. Kerry-Lynne D. Findlay: Thank you.

The Chair: Mr. Cotler, welcome.

Hon. Irwin Cotler (Mount Royal, Lib.): Thank you.

The Chair: I'm sure you've heard, but in your absence your friends made you vice-chair of the committee. Congratulations.

Hon. Irwin Cotler: I don't know if that was to welcome me or to burden me, Mr. Chairman, but I appreciate the support.

Minister, as you know, the Parliamentary Committee on Palliative and Compassionate Care issued a report entitled *Not to be Forgotten: Care of Vulnerable Canadians*. The report included a host of recommendations for combatting elder abuse. In particular it discussed strategies for addressing the problem of elder abuse, and that the vast majority of such cases never make it to a court of law. This legislation, in that sense, will underpin that concern.

Among other things, the report called for better training for legal professionals and law enforcement officers in how to identify and

prosecute elder abuse, establishment of special courts for elder abuse as exist for other incidents of family abuse, and the tailoring of the existing court system to make it more amenable to seniors.

Minister, could you share with us if these measures are otherwise being considered by the government? If so, is there a reason they were not referenced in this legislation?

• (1555)

Hon. Rob Nicholson: The legislation is very specific. As I indicated in my opening remarks, it's not the complete picture of what we are doing to assist elderly people in this country. I pointed out that the other legislation we had on white collar crime is a good example. The encouragement of the Government of Canada to have seniors and those working with them apply under the victims fund, the initiatives we have taken, the advertising campaign—all these are part of that.

I'm glad you mentioned it. I know that report did mention the role that law enforcement and the legal profession have in this. One thing I have done when I have spoken with members of the legal profession...it is the responsibility all of us have as lawyers to do what we can, either to intervene or to bring attention to this. You and others who practise private law, for instance, do come into contact with seniors. We do see examples where people try to take advantage of them.

I think I gave you this example one other time I was at the committee. I used to give my business card to my clients. I used to tell them if somebody tried to sell them something over the phone, they should ask them to call me. I said I'd be glad to look over it. If the person objects to your lawyer having a look at this, then you know there's something wrong. If you have a legitimate product or whatever it is you're trying to sell, and a lawyer's going to have a look at it, you'd welcome that, wouldn't you, if you were legitimate? If they have a problem with that, I always used to say to my clients, be very careful of that.

Again, we in the legal profession do, I believe, have a responsibility. Many times we do get involved. We see these things. Even within families you see situations where people look as if they may be taking advantage of an elderly member of the family, be that through estate planning, those sorts of things. I think we can play a very critical role, so I was glad to see that in there.

We have no plans to start setting up separate courts with respect to this, in answer to your direct question. It will be dealt with according to the existing judicial system. In addition to that, we are very supportive of those initiatives that, as you indicated, may be outside the court system, to either raise awareness, to get help to people, to get people to intervene on these things. Yes, we all have a responsibility. Certainly we in the legal profession have a great role to play.

Hon. Irwin Cotler: Minister, there has also been a particular concern expressed about the victimization of elder aboriginal women. There have been a significant number of elderly aboriginal women who in fact have been affected by violent victimization. Often it is by somebody they know, which makes them even more reluctant to report and bring a complaint. Is that particular issue being addressed separately and in a distinguishable fashion?

Hon. Rob Nicholson: Again, that's a very good point.

My colleague, the Minister of Aboriginal Affairs and Northern Development, is supportive of all initiatives to raise awareness among aboriginal families on the subject of violence.

I'm here specifically with respect to elderly people. But again, this applies to all individuals. The victims funds are open to all, but I know that there is specific funding within aboriginal affairs. My colleague would probably be in a better position to outline that for you.

You're quite correct. You make the point, as well, which I think is critical, that many times, the abuse isn't coming from somebody, as in my example of the salesman, who's trying to sell you something over the phone. It is coming within the family setting and from people very close. Again, we all have a stake in that.

Certainly one component is changing the criminal law so that this applies to everyone who does this. But again, there are other programs that basically apply to others, and I know this is a concern of aboriginal affairs as well.

• (1600)

Hon. Irwin Cotler: Thank you, Minister.

I want to share what my colleague, Madam Boivin, said, which is that this is something for which there is shared support on this committee. It's good to work on something we can hope to address through improving and refining, rather than having an adversarial situation.

Hon. Rob Nicholson: You make a very good point, Mr. Cotler.

Many times what we have to do with the Criminal Code is make sure that it's modernized and updated to reflect what actually happens in Canadian society. I've been before committees many times over the years, and you've experienced the same thing. The Criminal Code, as it was written or compiled in the 1890s, doesn't reflect exactly what's going on in Canadian society. So we continuously have to look at the provisions to make sure that they reflect what we know today.

In a Canadian society that has many more elderly people, and a much greater percentage than this country has ever seen, I think it's reasonable that we move forward and put in specific provisions. I think it is our responsibility as legislators to make sure that the Criminal Code doesn't get stuck in a particular era but continues to reflect what's actually happening in this country.

I think that's an excellent point. Thank you for it.

The Chair: Thank you.

Mr. Jean, you have five minutes.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you, Mr. Chair.

Minister, thank you so much for attending today and taking time out of your busy schedule.

I'm a little bit curious about the situation regarding aggravating factors. I notice that it appears that there are some new aggravating factors and certainly some that would change what currently exists in the law, especially regarding the current aggravating factors found in the Criminal Code. Could you comment, in general terms, on some of the new aggravating factors and how they fit in with the existing ones?

Hon. Rob Nicholson: This is one of the points that can be made. In the Canadian justice system, and certainly as part of the common law going back forever, when there was abuse of an elderly person, our courts took that into consideration. Fifty years ago, if you beat up a very senior citizen, the courts would look very poorly on that and would, in a sense, take that as an aggravating factor. I think it's appropriate, as I was indicating in my comments to Mr. Cotler, that we should reflect what we believe are the priorities and what we are hearing in Canadian society to ensure that this is taken into consideration when a matter is before the court. Again, it's not to say that courts have ignored the fact that the victim may be an elderly person. But again, I think it's appropriate to reflect that, as we have in the past.

Madam Boivin mentioned children under the age of 18. Again, yes, it's an aggravating factor, and yes, most Canadians would agree with that. For many decades, and throughout the history of this country, we've recognized that there are special considerations taken if it's children you're abusing in this country.

Over the years we have amended, added, and refined those aggravating factors that we believe are important for a court to take advantage of. That's our job as legislators. We set out what type of behaviour we think is abhorrent and who should be protected and how. We have a very important role, as you know, and it's our job to do that. We're all part of that.

I'm very pleased that this specific amendment has been so well received up to this point. I hope that continues and continues to move through the legislative process.

Mr. Brian Jean: Certainly, Minister, and it sounds like these new aggravating factors are going to fit well with the Criminal Code and actually complement the ones that are currently there.

I'm curious. On CARP's website they talk about a case that took place in 2011. It was a gentleman by the name of Terence Richard Webb, who was 43 years old at the time, and took advantage of his uncle who had chronic dementia, to rob him of his entire life savings. In fact, the Office of the Public Guardian and Trustee said, and I quote, "It was one of the worst cases of elder abuse and neglect I have experienced."

Would you suggest, Minister, that the aggravating factors in this particular case would get somebody more of a sentence than three months of house arrest, 15 months with a curfew, and 100 hours of community service? Could you see that these aggravating factors would actually give this person more significant time in jail for something as horrific as that?

•(1605)

Hon. Rob Nicholson: I don't comment on specific cases. I'm not in a position to start analyzing any particular case that is now before the courts or has been before the courts.

That being said, you will remember we were very specific with respect to the victims of white collar crime act. If you remember, we had mandatory sentences of two years or more in that particular legislation for individuals who engage in fraud of \$1 million or more.

Our job as legislators is to provide guidance, in the sense that we provide legislation. We indicate the penalties, whether they be minimums or maximums with respect to particular incidents, and we rely on the court system to determine each particular case.

As you know, in any particular case there is always the possibility of appeals if it's not acceptable to the crown or the defence. They have the ability to appeal these things to come up with a sentence that is appropriate in each circumstance.

But again, we were very specific with respect to white collar crime, as you know. We initiated these penalties, and that piece of legislation was well received.

The Chair: Thank you.

Mr. Brian Jean: And of course we listen to organizations such as CARP.

The Chair: Time is up.

Mr. Jacob.

[*Translation*]

Mr. Pierre Jacob (Brome—Missisquoi, NDP): Thank you very much, Mr. Chair.

Mr. Minister, thank you for joining us this afternoon.

Here is the first question that I would like to ask you. Have seniors groups or other groups been consulted in terms of federal initiatives to fight elder abuse?

If so, which are those groups and what do they recommend? Have they agreed to Bill C-36 and have they asked that any other amendments be made to the Criminal Code or other federal measures?

Please go into as much detail as possible, Mr. Minister.

[*English*]

Hon. Rob Nicholson: A number of years ago I met with individuals who were representatives for white collar crime victims. As you will know, there were a couple of very high-profile cases within the province of Quebec.

I've met with victims groups. I remember on a number of occasions I've met with them, basically across the country, and among the recommendations they made was that...many times elderly people are specific targets of individuals who come up with these schemes to rob them of their money. A number of them made the point that the loss of money is particularly deep and aggravated by the fact that they are elderly, and they don't have as much opportunity to replace that.

Over the years I have made a point of visiting every province and territory, cities, and I have had round tables on crime where we invite victims groups and individuals to make representations. For a bill like this, I don't table the bill with them and show them that this is okay. What we do is gather evidence and information when we discuss this with the people across Canada. The feedback that I'm sure you have received, and in general, is that this is an appropriate response for this particular issue. But again, it's part of a larger initiative, as I indicated, with respect to supporting victims groups and seniors, and advertisements to get the message out that senior abuse is not acceptable.

Indeed I have had these discussions with my provincial and territorial counterparts. As I indicated in my opening remarks, there are a number of initiatives across the country where the provinces are highly aware of this. I mentioned, for instance, in nursing homes there are a number of initiatives by provincial agencies to make sure that people in a seniors home aren't abused, perhaps by a caregiver or people who visit the seniors home.

Again, it is wide ranging, but as with all of these pieces of legislation, the feedback I've had has been positive.

•(1610)

[*Translation*]

Mr. Pierre Jacob: Thank you, Mr. Minister.

In your presentation, you said that it was a first step in the right direction and we should not stop there.

Have federal measures been taken or are they being put in place to prevent elder abuse?

As you must know, income security, affordable housing, access to universal pharmacare, home care and health care are measures that improve the quality of life and, as a result, are preventative measures for seniors.

[*English*]

Hon. Rob Nicholson: It's a continuing process with respect to initiatives, as I indicated in my opening remarks. One that I pointed out, which again I did get very good feedback on, was the advertisements put out by the federal government. You saw incidents where a senior was either being yelled at or was being abused. Those are the kinds of things that I think are very helpful.

One of the changes that's ongoing, for instance, where we are putting money, is the new horizons program. If you talk with seniors across this country, they're very aware of the new horizons program. I'm glad it's expanded its mandate, so that programs that would be specifically of assistance to seniors in recognizing senior abuse and giving them the tools and the information they need to report this, to resist this...it is something I very much support.

The recent budget that gave an extra \$10 million to this area had my support, of course. I'm very grateful to my colleague Mr. Flaherty for increasing these amounts. As I say, I think they're all steps in the right direction. They are reasonable and proper expenditures of government money, so this is what we will continue to do. As I say, one change to the Criminal Code can't be the whole show, and it's not the whole show; it's not the whole story of what we are doing.

I was here about two years ago on the white collar crime act. Again, that's one component of it, but I am very supportive of initiatives like new horizons and applications that come to the victims fund, which is another avenue for seniors who have become victims, for groups to put together applications. I'm very supportive of that. These will continue, you can be assured of that.

The Chair: Thank you.

Mr. Goguen.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Thank you, Mr. Chair.

Thank you, Mr. Minister, for bringing forth this important piece of legislation. I think all the parties agree it's definitely a step in protecting Canada's most vulnerable.

You've noted and have spoken on a couple of occasions about another piece of legislation, which I believe goes in that same direction. That's, of course, Bill C-21, the Standing Up for Victims of White Collar Crime Act. That's a significant piece of legislation, of course. It includes a mandatory minimum penalty of at least two years for fraud of over \$1 million. It toughens sentences by adding aggravating factors that the courts can consider. These are significant factors, which include whether the fraud has had a significant impact on the victim, given the victim's particular circumstances, including his age, health, and financial situation, and also the offender's failure to comply with applicable licensing and professional standards. It also considers the magnitude, complexity, duration of the fraud, and the degree of planning that went into creating it.

How can we reconcile the proposed aggravating factors in Bill C-36 to be differentiated from the aggravating factors we have in this other important piece of legislation, Standing Up for Victims of White Collar Crime Act?

Hon. Rob Nicholson: That's a very good question, Mr. Goguen.

The provisions with respect to the white collar crime act are very specific. I think I have the wording here. It targets specifically where "the offence had a significant impact on the victims, given their personal circumstances, including their age, health and financial situation". It's very specific with respect to the type of offence that's being committed.

You will remember and you've seen stories where people have come up with schemes that deliberately, particularly, targeted seniors, to steal their money, to rob them. I think it was important for us to make changes that are specific to that type of crime. You've enumerated a number of them: people who take advantage of their position or their profession and the reliance people place on that, or the effect it can have on a particular group. It's not just the amount of money, or it's not just the fact that it's been stolen, but you might devastate groups that do good work in society and have them robbed of that. It's of concern to all of us. Again, with respect to seniors, the effect it can have on them...that is specific in terms of aggravating factors.

The provisions you have before you are the general provisions with respect to aggravating factors. If it's a white collar crime, then those provisions kick in. These apply to all offences outside of that. It's a general application. Again, I'm pleased, as you indicated, that there is general support for this.

•(1615)

[Translation]

Mr. Robert Goguen: I would like us to take a minute and talk about how you see the impact of this legislation. I know that, in itself, a breach of the Criminal Code will certainly not have the desired effect. You talked about the New Horizons program, which points to the need to report elder abuse cases.

Do you think that more abuse cases will be reported as a result of the New Horizons program and this amendment to the legislation?

[English]

Hon. Rob Nicholson: I am confident that all of the initiatives that have been taken by the government and at the provincial and territorial levels will contribute to a heightened awareness and will be of assistance to seniors in this country.

Mr. Goguen, you and I go back 30 years. I don't remember at the time people talking about this that much, and I don't remember this kind of awareness of this. I mentioned to you the advertisements that you would have seen this year with respect to somebody out on the street yelling at somebody and somebody getting money from their relative or their mother—I'm not sure who—but the point is that by doing what we can at all different levels of government here, we are making progress, in my opinion, in this area, because you don't have to explain to people anymore what elder abuse is. They know what it is. They have examples of this. They've heard of it. They've maybe experienced it. They know members of their family.

So to the extent that we continue to push this, and, as I was saying in response to Mr. Cotler, to the extent that the legal profession and members of the police association continue to get people thinking about this issue, we're all better off, because the reality in this country is that there is an increasing seniors population, and I think this is very appropriate. This is an idea whose time has come, but I think all of these help. This is why, when I get together with my provincial counterparts and I hear about the initiatives they have, I certainly, as you would and as all of us would, applaud these efforts here, because this is exactly what we have to be doing. It's not just one level of government; it's not just one piece of legislation. There has to be a complete approach to this, and this is what we're doing.

The Chair: Thank you.

Madam Blanchette-Lamothe.

[Translation]

Ms. Lysane Blanchette-Lamothe (Pierrefonds—Dollard, NDP): Thank you, Mr. Chair.

I am happy to be here with you today. Thank you for having me.

I am going to ask my questions right away, if you don't mind.

First, I would like to talk about the choice of words in the bill.

When we talk about offences, does that include omission, for example when a person wilfully fails to provide proper basic hygiene to a senior? Seniors are often the target of this type of abuse. The bill says the following: “that the offence had a significant impact on the victim”. Is neglect included in the word “offence”? According to the National Seniors Council, the definition of elder abuse is not sufficiently clear. Are words like “significant impact” going to help us determine whether the offence really had a significant impact on the person's life?

Other words raise some questions. You specifically refer to “their health and financial situation”. Why stop at those two examples? Why have other examples not been included? Do not get me wrong, I do not want the bill to be defeated; I simply want to have more information to make sure that the wording is correct. We could have also talked about place of residence. Not having a place of residence or being dependent on someone else can also make seniors more vulnerable and lead to abuse. Access to information can also increase vulnerability.

This is a broad issue, but I will give you the opportunity to tell me why you have chosen those words in particular. Do you think that this paragraph makes the bill sufficiently strict in detecting elder abuse cases?

• (1620)

[English]

Hon. Rob Nicholson: In answer to your question, my comment was that this is part of a larger approach. It's not the whole approach. I've been mentioning, of course, the changes on white collar crime and those specific sections, but those aren't the only sections that address some of the issues you have raised.

You asked about neglect. How about people who aren't getting some of the necessities of life? There are provisions within the Criminal Code. Section 215, I believe, of the Criminal Code has an 18-month maximum sentence on summary conviction or, I believe, five years for an indictable offence for people who do not provide the necessities of life when they are in a position in which they are supposed to be caring for somebody or assisting somebody and are withholding those necessities of life.

Again, you ask why we do it here. Well, this particular section deals with the grocery list of aggravating factors we ask the courts to take into account when they are sentencing an individual. But they're not the only provisions.

With respect to your specific question about the necessities of life, have a look at section 215. I think you'll see that it addresses a number of the areas you indicated. Why do we do it here? Well, over the years, this is the section of the Criminal Code that has been modified to take into consideration the priorities Canadians have and it is where we think specific mention should be made. That being said, it doesn't mean that these things were ignored in the past. It doesn't mean that at all. It is saying that these are a reflection of our priorities, but they're not the only ones.

I would refer you to section 215, and indeed the sections with respect to white collar crime. They are specific to the various ways people are taken advantage of.

[Translation]

Ms. Lysane Blanchette-Lamothe: Thank you. I am going to take a look at that with great interest.

I would now like to talk about the title of your bill, Protecting Canada's Seniors Act. As you said, this bill does not protect seniors; it is a measure that might enable us to crack down on more serious crimes, based on a person's age and circumstances. Why was the wording “protecting seniors” chosen for the title? Would other words have not corresponded better to what the legislation really seeks to accomplish? We recognize that this is an important bill and that it has to be put forward, but we should call a spade a spade.

[English]

The Chair: Minister.

Hon. Rob Nicholson: This is exactly what it's intending to do. It's trying to send the message out that this kind of behaviour, the abuse of seniors, is unacceptable. Part of the job we have as legislators is that by publicizing and talking about this, we are better protecting our seniors. We hope this acts as a deterrent. It certainly provides denunciation for people who commit this kind of crime. By listing it as part of the aggravating factors, we send out the message that the abuse of seniors in this country is inappropriate.

I think it's very appropriate and correct to call it the Protecting Canada's Seniors Act. Again, I hope it continues to have your support.

The Chair: Thank you.

We'll go to Mr. Albas.

[Translation]

Mr. Dan Albas (Okanagan—Coquihalla, CPC): Thank you, Mr. Chair.

[English]

Thank you to the minister for being here today.

I come from a riding, Okanagan—Coquihalla, where we have a large number of seniors, who moved there because it has good weather. We continue to see more and more people in my riding who are retired, thus this has been a real interest of mine.

First I would like to make a comment that I totally agree with your rationale for not including a chronological age, Minister. It's commonly known that we are living to be older and hopefully healthier, but as those health outcomes improve, we can obviously expect the chronological age will eventually have to be changed. This gives a large amount of discretion.

Going back to some of the comments I've heard across the way with regard to the palliative care report, before I was on this committee I was part of the status of women committee, which conducted a very thorough investigation into elder abuse, specifically of women. Mr. Jacob was saying that the consultation was done extremely... A large number of people came from all across the country to talk about their experience.

One of the key outcomes, Minister, I'm sure you know, was that the government look at introducing changes to the Criminal Code. I would like to thank you and the government for taking action on this, because a tremendous amount of work went into that study, and I'm glad to see that happen.

We heard quite a bit about the new horizons for seniors program, which is a great initiative. I also find that there's often a disconnect between taxpayers back home and all the programs that many of us are privy to and hear about.

In addition to the new horizons initiative, what is our Conservative government doing to assist seniors victimized by abuse? I certainly appreciate your comments that it was a multifaceted approach. You would expect that, but I would love to hear about any other programs we're currently working on.

•(1625)

Hon. Rob Nicholson: Thank you very much.

I was among those who were very pleased to see the new horizons program expanded, so there is an educational component with respect to the abuse of seniors. There is an awareness campaign that is now eligible for funding under the new horizons program.

I believe I indicated to one of your colleagues here that I like the idea because seniors and seniors groups over the years are used to and are aware of that particular program. Sometimes it's easier to expand an existing program that people are already aware of than to start something completely new. I was among those who thought that was very appropriate.

Within the victims fund, which is financed through the government, we allow and accommodate those issues that can be specific to seniors, among others. We've encouraged them to make applications in groups and as individuals, to have a look at the provisions within that.

I said "Elder Abuse—It's Time to Face the Reality" is the national awareness campaign that uses advertisements to do this. This comes from the Government of Canada. It doesn't rely on people making an application or pulling together a funding request. It's an advertising campaign. Again, what I have heard back from that is that it's good in terms of what we're talking about here today, which is to raise awareness, get people involved, so they have a stake in this or they recognize it—that's the other part, that they recognize elder abuse when it is taking place.

What we are doing is not confined to changes to the Criminal Code, and as you know, this is the second one that we have brought forward that is specific to elders. But this is in conjunction with those other initiatives, and indeed the initiatives from our provincial and territorial partners, who are recognizing that this is an issue within their jurisdictions as well.

We all have a part to play, but it has to be a comprehensive approach, and I'm pleased that this particular piece of legislation is an important component of that.

The Chair: Thank you, Minister.

We noted in our orders of the day that you would be here for one hour, and I think we've got to that one hour.

I'd like to thank you for appearing before us. The information obviously was worthwhile for the committee, and you are welcome back any time.

•(1630)

I'd like to get the second half of the meeting started. We'll do the order over again, so the opening rounds will be seven minutes.

We have officials with us today, and I'm sure they can answer almost all questions you may have with respect to the bill.

We'll start with Mr. Côté.

[*Translation*]

Mr. Raymond Côté (Beauport—Limoulou, NDP): Thank you, Mr. Chair.

I would like to thank the witnesses for joining us and for helping us with our work.

I listened carefully to the minister's answers. I believe that everyone has agreed that this bill has a relatively limited scope. That does not mean that it is a bad bill, but we have to be aware of its inherent limitations. I am not sure if you will be able to help me, but I cannot help but consider the full impact of implementing this bill. That is sort of my area of expertise.

At the Standing Committee on the Status of Women, we have heard that it is difficult for police forces and the justice system to handle cases of elder abuse. Although the current provisions in the Criminal Code make it to an extent possible to take legal action, those people face a number of challenges.

Could you provide the committee with some assurance that the bill will improve the situation in cases that will ultimately be brought before the justice system by police forces and will ensure that sentences are imposed when warranted?

Mr. Matthias Villetorte (Counsel, Criminal Law Policy Section, Department of Justice): Thank you.

Good afternoon, everyone.

Yes, we have looked at that aspect of the bill and its impact. As it has been said earlier in committee, courts were handling it to a certain extent. By clearly specifying it in the Criminal Code, it will be possible not only to recognize this practice before the courts, but also to ensure that this type of aggravating factor will be taken into account in all cases. As you know or as you may suspect, in the sentencing regime, an aggravating factor makes it possible to increase the sentence. So by specifying this in the Criminal Code, attention would be paid to aggravating circumstances in all cases.

Mr. Raymond Côté: We obviously agree that this will depend on the application before the courts, but, once again, abuse cases must be brought before the courts. Police forces, in particular, have said how powerless they felt. We were even told that some officers did not always see elder abuse as a criminal act.

I am not sure what the department could do to try and correct the situation, to support the police forces and to ensure that this bill is implemented.

Mr. Matthias Villette: You are absolutely right. Cases of elder abuse vary: they can be considered both criminal and non-criminal acts. I believe that everyone agrees that raising awareness of elder abuse is a major step in detecting cases and bringing them before the courts when they are clear cases of abuse.

As the Minister of Justice said earlier, there are awareness and education initiatives on legal matters, including rights, opportunities and available resources. The goal is to inform and educate the public about what elder abuse means, but also to indicate what resources are available to seniors to bring the cases before...

• (1635)

Mr. Raymond Côté: Mr. Villette, I wanted to talk about police forces in particular.

What additional resources are we going to be able to give them?

Mr. Matthias Villette: This goes somewhat beyond the scope of the Criminal Code, but I can talk about the crime victims assistance fund, for example. The fund has been used for organizing an awareness week with a view to educating the public about the realities of victims of crime. During that week, the elder abuse response team from Calgary was there. Representatives from the City of Calgary were asked to contribute. They have a police service that pays particular attention to those types of abuse cases. I have also heard that Ottawa has a police section that handles those cases. We are talking about finding a balance between raising awareness and providing support to victims in those cases.

Mr. Raymond Côté: A few years ago, a wonderful organization called L'Autre Avenue was founded in my constituency. It has since moved to the neighbouring riding of Charlesbourg—Haute-Saint-Charles, but it operates everywhere in Quebec City. L'Autre Avenue provides an alternative for going to court.

In his consultations with the provinces and other stakeholders, has the minister considered finding ways to come up with those types of alternatives? Let me quickly explain. For example, L'Autre Avenue gives police officers the possibility to avoid legal action when petty crimes are committed by young people. That enables the young person to make reparation to their victim, for example.

Mr. Matthias Villette: That is a great point. In fact, over the next few days, you will see on the website of the Department of Justice that a study was conducted, as a result of one of the initiatives that the Minister of Justice mentioned. The study will be public and a copy can be forwarded to this committee, if you wish. The study looks at mediation in those types of cases. It shows various models and it actually supports that type of approach so that incidents and conflicts related to abuse do not escalate. It is a good reference material. This aspect is taken into account. We have to make an effort to adopt this type of approach.

[English]

The Chair: Thank you.

The Edmonton elder abuse team has been invited to the committee.

Mr. Rathgeber.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair.

Thank you to the witnesses for your attendance and your expertise.

Following up with a question that was asked by our colleague, Ms. Boivin, I'm curious as to why the non-decision was made to put a chronological age in the legislation. As you know, with respect to certain provisions of the act, it's an aggravating factor when the victim or the person being abused is under the age of 18.

I'm curious as to why a specific chronological age wasn't used for the protection of elders.

Mr. Matthias Villette: Thank you for your question. The minister has already answered this question, but I will say that the chronological age of 18 is accepted in terms of it being clear-cut and everybody understanding why it is. It's quite different in the elder abuse context, where a chronological age is not as clear-cut.

In fact, as the minister said, there are quite a few federal statutes that do mention a chronological age and that look at issues such as pension, retirement. They use different chronological ages. The fact of not specifying a chronological age would permit a court to assess the facts of a situation and determine whether the combination of age and other personal circumstances would fit in—

• (1640)

Mr. Brent Rathgeber: So it's made to accommodate a situation where a person may not technically be a senior citizen, but they might have early onset dementia, and therefore it's contemplated that this type of individual would be covered by the protection afforded in this legislation.

Is my understanding correct?

Ms. Carole Morency (Acting Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice): If I could answer, it might help to think about the existing aggravating factor that refers to young persons under the age of 18. While there will be differences for young persons, clearly developmentally there are some clear milestones for persons under that age. Most kids fall within that, though there is some variation.

The same can't be said for older persons. At a certain age chronologically, your capacity, vulnerability, is X, whereas based on a developmental capacity for children, you can come to some clear-cut understandings.

There is a distinction there. I think the question earlier was why the age is 18 for children. It does reflect some very clear and recognized capacity issues for persons under that age. You don't have the ability to draw the same line in the sand, categorically, for all persons at an older age.

Mr. Brent Rathgeber: I accept that, and I think that's a good answer, but my technical concern—and maybe I'm missing something—is that the word “elder” or the word “senior” is absent from this proposed statute. It's “age and other personal circumstances”.

So, at least theoretically, a very young person who might be suffering from some sort of mental challenge or mental disability presumably could fall into the definition of someone whose age and personal circumstances require protection. That's slightly counter-intuitive under a statute that's called Protecting Canada's Seniors Act.

Mr. Matthias Villetorte: You're right, that could technically apply in situations that are not necessarily perceived as being elder abuse. However, it has to be the combination of age and other personal circumstances. Therefore, logic would apply in cases where the victim is an elderly person. To that extent, as long as the combination of age and other personal circumstances do apply, it would favour an application for older victims, if you want, rather than a 30-year-old with some health problems.

In addition, other aggravating factors would cover those situations. If we read the list of aggravating factors, one would expect that elder abuse situations would be covered by that aggravating factor.

Mr. Brent Rathgeber: Just so we're clear, the purpose of this act is not to provide extra protection as an aggravating factor to somebody who you have suggested might be 30 years of age and suffering from a mental disability. That's not contemplated in the drafting of this legislation.

Mr. Matthias Villetorte: No, the legislation really is focused, short of setting a chronological age, on addressing those cases of elder abuse. So, yes, the aim of the legislation...

Mr. Brent Rathgeber: Do you know if the drafters considered the individual I just described might be caught up in that definition?

Mr. Matthias Villetorte: Yes. Again, technically, it could apply to situations that don't necessarily appear as such at first. Again, to the prior facts, a sentencing court will have to balance the facts of the case and come to a justification of the application by an aggravating factor.

There is a record of that. If you read it with other aggravating factors that are there in all elder abuse cases, this aggravating factor will apply.

Mr. Brent Rathgeber: Thank you.

The Chair: Madam Boivin.

[Translation]

Ms. Françoise Boivin: Thank you.

I still have a few quick questions. We are still talking about a bill that amends the Criminal Code.

The minister talked about it a little bit, but since we have bright people from the Department of Justice here with us, I would like them to tell us how the proposed amendment to paragraph 718.2(a) is linked to section 380 and the subsequent sections that deal with fraud.

The minister mentioned it. He specifically talked about the so-called white collar crime. The legislation already specifies age as an

aggravating circumstance. Age is already considered a factor under section 380.1.

During the work of this committee, I sometimes feel that we repeat ourselves. But I also know that you can never be too careful. It is possible that the proposed paragraph 718.2(a) does not go against section 380 and the subsequent sections, but it still refers to the impact on the financial situation and the age as well. What is the impact of those two provisions combined?

•(1645)

Mr. Matthias Villetorte: Those two provisions—the one in the bill and the one in section 380.1 of the Criminal Code—are not in conflict. As you know, the aggravating provision in section 380.1 has to do with fraud

The aggravating circumstance proposed in Bill C-36 is intended to be applied generally. So it would apply to all the other cases, except fraud, since cases of fraud already constitute a specific aggravating circumstance. Why was “financial situation” mentioned in this case when we have an aggravating circumstance? It is to address all the other offences that could affect a person's financial situation and that would not be covered under section 380.1, such as theft over \$5,000.

To some extent, all elder abuse situations would be covered, even if it was fraud, under section 380.1 or the provision in Bill C-36.

Ms. Françoise Boivin: You did the analysis before you prepared the text. The minister was telling us that there are still some situations... We are talking about updating the Criminal Code. The intent is to adapt it a bit more to the year 2012 and to draw on case law. Can you tell us today whether the issue of age was a problem? Was age not considered an aggravating circumstance or, on the contrary, is this simply going to reflect what courts already do anyway?

Mr. Matthias Villetorte: It is a bit difficult to give you a clear answer. When it is reported in case law, we know that it is reported and taken into consideration. To some extent, it really has to do with going back to case law and the current practice of taking into consideration the impact and age combined. We take into consideration the impact and another personal circumstance as an aggravating factor when determining the sentence.

I looked through the case law and I saw many cases. I noticed that, when courts take this into consideration, there is no debate as they are dealing with an advanced age. We are talking about 75, 80 or 90 years, but there is more than that to it. The issue is a bit broader. That is why it has to do with recognizing the current practice. However, the cases to which it applies have to be clearly defined, not just when the victim is 80 or 90 years old.

Ms. Lysane Blanchette-Lamothe: Since I only have one minute left, I am going to turn to the specific wording in the legislation.

The legislation mentions two examples of personal circumstances, namely health and the financial situation. Are examples often included without mentioning all the situations? Wouldn't judges have more tools if other personal circumstances were listed? For instance, if the crime is committed by the person in whose house the senior lives, that person's place of residence can become an aggravating factor. The place of residence or the fact of living with someone can have an impact. Would it not be appropriate to add more details to the personal situation? If not, why not?

Mr. Matthias Villetorte: There is always a danger with exhaustive lists. The more elements we list, the more we will think that it is exhaustive and are likely to limit ourselves to that list. We would certainly not want to leave some situations out.

You are right, it is not only about the health and financial situation, but those two personal circumstances, together with age in those cases, are the easiest to understand; they are the clearest. Of course, the list of examples provided in Bill C-36 is not exhaustive or restrictive, and other personal circumstances could be considered. There is nothing stopping that.

• (1650)

Ms. Lysane Blanchette-Lamothe: Is there a reason? You are saying that those are the easiest personal circumstances to understand and that is why they were included in the bill. However, a parliamentary committee that is currently dealing with palliative care

and compassionate care says that training has to be given to judges and prosecutors so that they can really understand and apply that type of legislation. Awareness needs to be raised among members of the legal community in terms of the seriousness of abuse problems.

Why were those two examples chosen? Why were cases that are a little less clear not included so as to ensure that those interpreting the legislation keep them in mind?

Mr. Matthias Villetorte: The purpose of mentioning this aggravating circumstance in the Criminal Code is not to raise general awareness of the problem, but rather to make sure that people keep it in mind when determining a sentence. Some of the government programs that the minister mentioned seek to provide legal education to some players in the justice system. That is how education would be provided to a greater extent and it would be far more detailed than could be included in only one provision in the Criminal Code.

[English]

The Chair: That was much longer than a minute, but that's okay.

I'd like to thank the officials for being here today. It has certainly helped the committee. It is a small bill, but it's important that we get it right. We appreciate that.

This meeting is adjourned.

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